



Senate

General Assembly

File No. 396

February Session, 2002

Substitute Senate Bill No. 431

Senate, April 9, 2002

The Committee on Finance, Revenue and Bonding reported through SEN. LOONEY of the 11th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING ENFORCEMENT OF THE REGULATION OF CERTAIN CIGARETTE MANUFACTURERS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 4-28j of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2002*):

3 (a) Each tobacco product manufacturer that elects to place funds
4 into escrow pursuant to section 4-28i, as amended, shall annually
5 certify to the Attorney General that it is in compliance with said
6 section 4-28i.

7 (b) The Attorney General may bring a civil action on behalf of the
8 state against any tobacco product manufacturer that fails to place into
9 escrow the funds required under section 4-28i, as amended. Any
10 tobacco product manufacturer that fails in any year to place into
11 escrow the funds required under section 4-28i, as amended, shall (1) be
12 required within fifteen days to place such funds into escrow as shall

13 bring it into compliance with section 4-28i, as amended. The court,
14 upon a finding of a violation of this subsection, may impose a civil
15 penalty in an amount not to exceed five per cent of the amount
16 improperly withheld from escrow per day of the violation and in a
17 total amount not to exceed one hundred per cent of the original
18 amount improperly withheld from escrow; (2) in the case of a knowing
19 violation, be required within fifteen days to place such funds into
20 escrow as shall bring it into compliance with section 4-28i, as
21 amended. The court, upon a finding of a knowing violation of this
22 subsection, may impose a civil penalty in an amount not to exceed
23 fifteen per cent of the amount improperly withheld from escrow per
24 day of the violation and in a total amount not to exceed three hundred
25 per cent of the original amount improperly withheld from escrow; and
26 (3) in the case of a second knowing violation, be prohibited from
27 selling cigarettes to consumers within the state, whether directly or
28 through a distributor, dealer or similar intermediary, for a period not
29 to exceed two years. All costs, fees and expenses in connection with
30 such action shall be assessed as damages against the tobacco product
31 manufacturer together with reasonable attorney's fees.

32 (c) Each failure to make an annual deposit required under section 4-
33 28i, as amended, shall constitute a separate violation.

34 Sec. 2. Section 12-302 of the general statutes is repealed and the
35 following is substituted in lieu thereof (*Effective October 1, 2002*):

36 (a) Except as otherwise provided in subsection (b) of this section,
37 each distributor shall affix, or cause to be affixed, at the location for
38 which such distributor's license is issued, in such manner as the
39 commissioner may specify in regulations issued pursuant to this
40 chapter, to each individual package of cigarettes sold or distributed by
41 the distributor, stamps of the proper denomination, as required by
42 section 12-296. Such stamps may be affixed by a distributor at any time
43 before the cigarettes are transferred out of the distributor's possession.

44 (b) No distributor shall affix, or cause to be affixed, to a package of
45 cigarettes sold or distributed by such distributor, stamps, if the

46 package (1) is not labeled in conformity with the requirements of the
47 federal Cigarette Labeling and Advertising Act, 79 Stat. 282, 15 USC
48 1331 et seq., or any other federal requirement for the placement of
49 labels, warnings and other information, applicable to packages of
50 cigarettes that are intended to be sold within the United States; (2)
51 bears any label or notice prescribed by the United States Department
52 of Treasury to identify cigarettes intended for export and exempt from
53 tax by the United States pursuant to 26 USC 5704(b), including "For
54 export only", "U.S. Tax-exempt", "For use outside U.S." or similar
55 wording indicating that the manufacturer did not intend that the
56 product be sold within the United States, including any notice or label
57 described in 27 CFR 290.185; (3) has been imported into the United
58 States after January 1, 2000, in violation of 26 USC 5754 or regulations
59 adopted thereunder; (4) in any way violates federal trademark or
60 copyright law or if all federal taxes due have not been paid on the
61 cigarettes; [or] (5) has been modified or altered by a person other than
62 the manufacturer or person specifically authorized by the
63 manufacturer, including modification or alteration by the placement of
64 a sticker or label to cover information, including the wording, labels or
65 warnings described in subdivision (1) or (2) of this subsection, on the
66 package; or (6) has been manufactured or sold by a tobacco product
67 manufacturer that is in violation of subdivision (2) of subsection (a) of
68 section 4-28i, as amended, or section 4-28j, as amended by this act, and
69 the distributor has been notified by the commissioner of such
70 violation. Notwithstanding the provisions of section 12-15, as
71 amended, the commissioner may disclose to the public the name of
72 any person who has violated the provisions of section 4-28i, as
73 amended, or section 4-28j, as amended by this act.

74 Sec. 3. Section 12-303 of the general statutes is repealed and the
75 following is substituted in lieu thereof (*Effective October 1, 2002*):

76 (a) Except as otherwise provided in subsection (b) of this section,
77 each dealer shall, within twenty-four hours after coming into
78 possession of any cigarettes not bearing proper stamps evidencing
79 payment of the tax imposed by this chapter, and before selling such

80 cigarettes, affix or cause to be affixed, at the location for which such
81 dealer's license is issued, in such manner as the commissioner may
82 specify in regulations issued pursuant to this chapter, to each
83 individual package of cigarettes, stamps of the proper denomination,
84 as required by section 12-296.

85 (b) No dealer shall affix, or cause to be affixed, to a package of
86 cigarettes sold or distributed by such dealer, stamps, if the package (1)
87 is not labeled in conformity with the requirements of the federal
88 Cigarette Labeling and Advertising Act, 79 Stat. 282, 15 USC 1331 et
89 seq., or any other federal requirement for the placement of labels,
90 warnings and other information, applicable to packages of cigarettes
91 that are intended to be sold within the United States; (2) bears any
92 label or notice prescribed by the United States Department of Treasury
93 to identify cigarettes intended for export and exempt from tax by the
94 United States pursuant to 26 USC 5704(b), including "For export only",
95 "U.S. Tax-exempt", "For use outside U.S." or similar wording indicating
96 that the manufacturer did not intend that the product be sold within
97 the United States, including any notice or label described in 27 CFR
98 290.185; (3) has been imported into the United States after January 1,
99 2000, in violation of 26 USC 5754 or regulations adopted thereunder;
100 (4) in any way violates federal trademark or copyright law or if all
101 federal taxes due have not been paid on the cigarettes; [or] (5) has been
102 modified or altered by a person other than the manufacturer or person
103 specifically authorized by the manufacturer, including modification or
104 alteration by the placement of a sticker or label to cover information,
105 including the wording, labels or warnings described in subdivision (1)
106 or (2) of this subsection, on the package; or (6) has been manufactured
107 or sold by a tobacco product manufacturer that is in violation of
108 subdivision (2) of subsection (a) of section 4-28i, as amended, or
109 section 4-28j, as amended by this act, and the dealer has been notified
110 by the commissioner of such violation. Notwithstanding the provisions
111 of section 12-15, as amended, the commissioner may disclose to the
112 public the name of any person who has violated the provisions of
113 section 4-28i, as amended, or section 4-28j, as amended by this act.

This act shall take effect as follows:	
Section 1	<i>October 1, 2002</i>
Sec. 2	<i>October 1, 2002</i>
Sec. 3	<i>October 1, 2002</i>

Statement of Legislative Commissioners:

In section 1, "violator" was changed to "tobacco product manufacturer" for clarity.

FIN *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Fund-Type	Agency Affected	Current FY \$	FY 03 \$	FY 04 \$
GF - Cost Recovery	Attorney General	None	Potential Significant	Potential Significant
GF - None	Revenue Serv., Dept.			

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill permits the state to recover any costs in connection with civil actions brought by the Attorney General against a tobacco product manufacturer that fails to place into escrow the funds required under CGS Section 4-28i. The cost of such an action could exceed \$100,000 (including attorney time, court costs, investigation and expert costs.) Enforcement of the escrow fund provision began recently, and the number of manufacturers against which the Attorney General might bring suit is unknown.

The bill allows the commissioner of the Department of Revenue Services (DRS) to make public the names of any cigarette dealers and distributors who violate the bill's provision against stamping cigarettes made by a nonparticipating manufacturer that has not complied with the escrow requirements. The DRS would be able to absorb any additional cost, if any, related to making these names public.

OLR Bill Analysis

sSB 431

AN ACT CONCERNING ENFORCEMENT OF THE REGULATION OF CERTAIN CIGARETTE MANUFACTURERS**SUMMARY:**

By law, cigarette manufacturers that are not participating in the master tobacco settlement agreement must make payments into qualified escrow accounts for each cigarette they sell in the state. This bill prohibits cigarette dealers and distributors from stamping and, thus from selling, cigarettes made by a nonparticipating manufacturer that has not complied with the escrow requirements.

The prohibition applies only if the Department of Revenue Services commissioner notifies dealers and distributors of the violation. The bill allows the commissioner to make violators' names public. Current law generally bars the commissioner from disclosing tax information.

The law already allows (1) the attorney general to sue manufacturers that fail to make the escrow payments and (2) the court to assess civil penalties against them. The bill requires the court to assess such manufacturers for all the costs, fees, and expenses of the lawsuit, plus reasonable attorney's fees.

EFFECTIVE DATE: October 1, 2002

COMMITTEE ACTION

Finance, Revenue and Bonding Committee

Joint Favorable Substitute

Yea 42 Nay 0